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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 275

STELLA J. CARTER,
ALFRED P. GOODLET,
Petitioners,

v.

KATHERINE SIMPSON, Executrix of the Last Will of George L. Laux, Deceased,
NATIONAL MALLEABLE AND STEEL CASTINGS COMPANY,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

Page

Jurisdiction 2

Opinion Below 2

Questions Presented 2

Statement 3

Specification of Errors to be Urged 6

Reasons Relied on for Granting the Writ:

1. The Court below decided an important question of local law in a way in conflict with the local decisions 7

2. The Court decided a question of great general importance in that it held that a Probate Court at the domicile of the testator and in which the will of the testator was probated did not have jurisdiction to construe such will with respect to a devise of shares of stocks in a foreign corporation unless the shares of stock were present in the jurisdiction of said Probate Court. The importance of this holding is that if such is the law, a local Probate Court would not have jurisdiction to administer an estate and construe a will with respect to a devise of stock in a foreign corporation if the certificates for such shares were outside the territorial jurisdiction of such Probate Court and thus administration of such estates would be made impossible 8

INDEX Continued

Page

3. The Court below held that shares of stock in a foreign corporation and devised in a will probated in the domiciliary court of the testator were not within the jurisdiction of such domiciliary court so that such court could construe the will, contrary to the recognized rule that for the purpose of descent and distribution the personal property of the testator is always deemed to have its situs at the domicile of the testator 8

4. The Court below reviewed and, in effect reversed a judgment of the State Court and which these petitioners contend is the exercise of a jurisdiction not vested in such Circuit Court of Appeals 9

APPENDIX

LIST OF AUTHORITIES CITED

	Page
Burns' Ind. Rev. Statutes, Sec. 2-807	4
Corpus Juris, Vol. 18, p. 811, Sec. 4	8
Dickman's Estate, In re (1946, Ohio), 79 N. E. (2d) 172 (174)	11
Essig v. Lower (1889), 120 Indiana 239 (244)	12
Hart v. Brown (1949), 404 Ill. 498, 89 N. E. (2d) 370 (374)	11
Hogland v. Moore (1929), 219 Alabama 497, 122 Southern 824	9
Hughes v. Hughes (1902), 30 Ind. App. 591	7
Irving v. McLean (1835), 4 Blackford 51 (53)	9
Jackson v. State (1885), 104 Indiana 516 (517, 520)	11
Lozier v. Lozier (1919), 99 Ohio St. 254, 124 N. E. 167	9
Osburn v. McCartney (1887), 121 Illinois 408, 12 N. E. 72	9
Smith v. Downey (1893), 8 Ind. App. 179 (184)	9

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To: The Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States.

Your petitioners, Stella J. Carter and Alfred P. Goodlet, each respectfully pray that a writ of certiorari be issued out of and under the Seal of this Court to review the decision of the United States Court of Appeals for the Seventh Circuit, rendered on the 7th day of March, 1952, and which reviewed and reversed a judgment of the United States District Court for the Southern District of Indiana, for these petitioners.

JURISDICTION

Jurisdiction to review this case on writ of certiorari is conferred on this Court by 28 U. S. C., Sec. 1254(1).

The opinion of the Court of Appeals for the Seventh Circuit was filed on the 7th day of March, 1952. These petitioners filed their petition for rehearing on the 21st day of March, 1952, and the order denying petition for rehearing was filed on the 18th day of April, 1952. Application for an extension of time in which to file this petition was made and granted on the 11th day of July, 1952, and time for filing this petition extended to and including August 17, 1952.

OPINION BELOW

The District Court made its finding of facts, stated its conclusions of law (R. 135) and rendered judgment in favor of these petitioners. (R. 157). The opinion of the Court of Appeals for the Seventh Circuit appears in 195 Fed. 2nd 8, and it was printed in the record (R. 179).

QUESTIONS PRESENTED

The questions presented by this petition are:

1.

Does the United States Circuit Court of Appeals have jurisdiction to review and in effect reverse a judgment of a state court?

2.

Was the Marion Probate Court, the domiciliary Court of testator, under the facts and circumstances shown by this record, without jurisdiction to construe the will of

James Goodlet for the reason that the shares of stock in question were outside its territorial limits?

3.

Is a local Probate Court without jurisdiction to settle an estate, construe a will devising shares of stock in a foreign corporation, and order distribution, when the certificates for such shares are outside such Probate Court's territorial limits?

4.

Was the judgment of the Marion Probate Court subject to collateral attack in this proceeding?

STATEMENT

James Goodlet died testate, a resident of Marion County, Indiana, in 1894. His will was probated in what is now designated as the Marion Probate Court, Marion County, Indiana. By such will he bequeathed to his three children shares in the National Malleable and Steel Castings Company. A provision of the will was that if any of such children died without issue, the shares were to go to the survivors.

One child, Lillian B. Goodlet Laux, died in May, 1942 without issue, a resident of the State of Washington, and her surviving husband, George L. Laux, was appointed administrator of her estate in that State. Thereupon, these petitioners made claim to the shares that she had held and on November 16, 1942, Goodlet filed suit in the Marion Probate Court to construe the will of his father, James Goodlet, making one George L. Laux, the surviving husband and administrator of Lillian B. Goodlet Laux's estate, defendant, and gave notice by publication and by sending said Laux by United States mail, a copy of the

complaint, receipt of which copy was by his counsel acknowledged.

While such suit was pending Laux removed to the State of Montana, taking with him the certificates of stock, and died a resident of Montana, leaving heirs, all of whom were unknown to plaintiff Goodlet. Upon the death of said Laux, plaintiff amended his complaint to construe the will and named as defendant the unknown heirs of said Laux, and notice was given to such unknown heirs by publication under Section 2-807 Burns Indiana Statutes (R. 96). Said unknown heirs had knowledge of the proceedings but did not appear (R. 97), and a default judgment was taken against them and the Court made its decree and judgment under date of June 26, 1947, construing the will and holding that under its provisions said shares went to these petitioners and that petitioners were entitled to have such shares transferred to them on the books of the Corporation. (R. 117).

Katherine Simpson was a sister and heir of George L. Laux and some months after the rendition of the judgment of the Marion Probate Court, was appointed executrix of the will of said Laux (R. 118).

On April 26, 1949, Goodlet filed in the Marion Superior Court of Marion County, Indiana, his suit to mandate the Corporation to issue to these petitioners certificates of said stock. Thereupon the National Malleable and Steel Castings Company filed its Interpleader suit in the District Court making these petitioners and Katherine Simpson, Executrix, defendants, and such proceedings were had in such cause that the District Court rendered its judgment that these petitioners were the owners of said shares and entitled to have the same transferred to them on the books of the Corporation. (R. 157).

No appeal was ever taken from the decree of the Marion Probate Court, nor was any suit ever filed to set it aside. On appeal the Court of Appeals reversed. (R. 195).

In reversing the District Court, the Court of Appeals held:

1.

That the Marion Probate Court did not have jurisdiction to construe the will of James Goodlet for the reason that the shares of stock were not within the territorial jurisdiction of such Probate Court. Therefore that judgment was void.

2.

That the subject matter of the suit to construe the will was not the will but the shares of stock that were devised by the will, and inasmuch as the certificates for the shares were not within the territorial limits of the Court and the corporation was foreign, the Marion Probate Court did not have jurisdiction of the subject matter and, therefore, its judgment was void.

3.

The Marion Probate Court, in its decree, found that the cause of action was for the construction of the will of James Goodlet, and that such will was probated and of record in that Court, and that the Probate Court had jurisdiction of all the parties for the purpose of said cause (R. 112), and made its decree construing said will. The Court of Appeals in the course of reversing the District Court, reviewed this decree and held the cause of action was not to construe the will but to determine the ownership of the property devised by the will, and in effect reviewed the judgment of such Probate Court by construing the will in a different manner and in conflict with applicable Indiana

decisions, and ordering distribution of the shares and dividends in accordance with its judgment.

SPECIFICATIONS OF ERRORS TO BE URGED

The Court of Appeals erred as follows:

1.

In holding that the subject matter of the suit in the Marion Probate Court was the ownership of the shares devised by the will and not the will, contrary to the decisions of the Indiana Courts.

2.

In holding the Probate Court did not have jurisdiction to construe the will because the shares were those of a foreign corporation and the certificates were not situate within the Court's jurisdiction.

3.

In holding that a probate court of the testator's domicile, and in which court the will is probated, does not have jurisdiction to construe the will devising shares in a foreign corporation unless such shares are present in such court's territorial jurisdiction.

4.

In not holding that for the purpose of determining its descent and distribution personal property is deemed to have its situs at the domicile of the owner at the time of his death.

5.

In reviewing, and in effect reversing, the judgment of the Marion Probate Court.

REASONS RELIED ON FOR GRANTING THE WRIT

1.

The Court below decided an important question of local law in a way in conflict with the local decisions.

Argument

It was the contention of the petitioners that the suit in the Marion Probate Court was to construe the will of James Goodlet and that such will was the subject matter of the suit.

The Court of Appeals stated this was a "dubious contention" and held that the subject matter of the suit was the shares devised by the will.

In the case of *Hughes v. Hughes* (1902), 30 Ind. App. 591, in an action to construe a will, that Court, on page 594, said:

> "The subject matter of this action was the will of Samuel D. Delzell. The relief was primarily a construction of said will."

The importance of this decision is obvious. If the ruling of the Court of Appeals is upheld, it will deprive state courts of jurisdiction to construe the wills of their citizens and probated in such Court's records in all cases where the will devises shares of stock in a foreign corporation when the certificates for such shares are beyond the territorial limits of such probate court. All that would be necessary to deprive the court of its jurisdiction would be for a claimant to secure possession of the certificate and take it outside the state. Such a rule would not only greatly impair the orderly administration of many estates but would make impossible final settlement and distribution thereof.

2.

The Court below decided a question of great general importance in that it held that a local probate court at the domicile of the testator and in which the will of the testator was probated does not have jurisdiction to construe such will with respect to a devise of shares of stock in a foreign corporation unless the shares of stock are present within the territorial jurisdiction of said probate court.

3.

The Court below held that shares of stock in a foreign corporation and devised in a will probated in the domiciliary court of the testator were not within the jurisdiction of such domiciliary court so that such court could construe the will, contrary to the recognized rule that for the purpose of descent and distribution personal property of the testator is always deemed to have its situs at the domicile of the testator.

Argument

For the sake of brevity we shall discuss specifications 2 and 3 together.

These petitioners contend that such holding in the instant case is error. First, for the reason as set out above, that the subject matter of the suit in the Marion Probate Court was not the shares of stock but the will and that the situs of the shares is not determinative of the question of jurisdiction to construe the will. Second, that if situs of the shares were determinative of jurisdiction, that, being personal property, for the purpose of descent and distribution in the matter of estates, their situs is deemed to be that of the domicile of the owner at the time of his death.

On this matter *Corpus Juris*, Vol. 18, p. 811, Sec. 4, states:

> "The rules applying the laws of the domicile of the owner to the assignment, transfer and transmission of personal property have for their basis the fiction that personal property has no locality but follows the person of the owner."

In *Irving v. McLean* (1835), 4th Blackf. 51, on page 53, the Indiana Supreme Court recognized this principle.

In *Lozier v. Lozier* (1919), 99 Ohio St. 254, 124 N. E. 167, that Court, on page 167, said:

> "It is not enough that the securities had as their situs the State of New York; being personal property their domicile is ambulatory and follow their lawful custodian and, under the Ohio law the primary lawful custodian of this trust is the Probate Court of Cuyhoga County, Ohio."

Similar holdings are:

> *Hogland v. Moore* (1929), 219 Ala. 497, 122 So. 824;
> *Osburn v. McCartney* (1887), 121 Ill. 408, 12 N. E. 72.

Inasmuch as the great weight of authority, we believe, is that certificates of stock are but the *evidence* of the stock (*Smith v. Downey* (1893), 8 Ind. App. 179, 184) and the property of the corporation represented by the shares is deemed to have its situs at the home of the corporation, if the holding of the lower court is sustained, a local probate court could never obtain jurisdiction to construe a will devising stock in a foreign corporation.

Such holding would deprive the probate courts of the states of jurisdiction in all such cases and would leave countless estates without any means of administration.

4.

The Court below reviewed, and in effect, reversed, a judgment of the state court and which these petitioners

contend is the exercise of a jurisdiction not vested in such Circuit Court of Appeals.

Argument

On this specification the Marion Probate Court found that the action before it was to construe the will of James Goodlet and that defendants had been given due notice and that it had the jurisdiction of the parties for the purpose of such cause (R. 112).

While petitioners believe these matters were correctly determined by that Court, whether that determination was correct or not, it was a determination of a legal question by the Court and was final until changed or reversed in a direct proceeding or on appeal.

Petitioners do not believe there would be any serious contention that the Circuit Court of Appeals had any jurisdiction to sit as an appellate tribunal and review and modify or reverse the judgment of such Probate Court, and what cannot be done directly cannot effectively be done indirectly.

The Circuit Court of Appeals first reversed the Probate Court by determining the cause was not for the construction of the will but to determine the ownership of the shares. Having made that revision of the Probate Court's judgment, the Circuit Court of Appeals then further reviewed and reversed the Probate Court by reconstruing the will and construed it in an entirely different manner which effected a complete reversal of the judgment of the Probate Court.

This, these petitioners respectfully submit, the Circuit Court of Appeals had no authority or jurisdiction to do.

COLLATERAL ATTACK ON JUDGMENT

To question the jurisdiction of the Probate Court is a collateral attack.

> In re *Dickman's Estate* (1946, Ohio), 79 N. E. (2d) 172, 174.

The Marion Probate Court is by statute (Sec. 4-2910 Burns, 1933) specifically given jurisdiction of actions to construe wills. It, therefore, has jurisdiction of that class of cases.

In the case of *Hart v. Brown* (1949), 404 Ill. 498, 89 N. E. (2d) 370, that Court on page 374, said:

> "Jurisdiction of the particular matter does not mean simply jurisdiction of the particular case then receiving the attention of the Court, but jurisdiction of *the class* of cases to which the particular case belongs. * * * If a bill or petition states a case belonging to the general class over which the authority of the Court extends, the jurisdiction attaches and no error committed by the Court can render the judgment void."

The Probate Court specifically found the cause before it was an action to construe a will (R. 112).

In *Jackson v. State* (1885), 104 Ind. 516, on page 517, that Court said:

> "It has long been the rule in this State that where a court is required to determine whether facts essential to jurisdiction exist, a judgment that they do exist will be conclusive as against a collateral attack."

And on page 520 that Court said:

> "In this case there was an assumption of jurisdiction and a judgment; hence there was an adjudication of jurisdictional question."

In the case of *Essig v. Lower* (1889), 120 Ind. 239, the Court considered a collateral attack on a judgment. In that case it was contended the court lacked jurisdiction because of defective notice. On page 244, the Court said:

> "It became, therefore, a question to be determined by the courts in which these proceedings were pending as to whether such affidavits and notices were sufficient. The Court having determined that question in favor of jurisdiction, such determination is conclusive as to all the parties when collaterally attacked."

The Probate Court assumed jurisdiction and rendered judgment in the cause and by such acts and by its specific finding determined it had jurisdiction. Whether that determination was correct or not, it was conclusive against collateral attack and the Circuit Court of Appeals had no jurisdiction to review that judgment and make some other determination of the legal questions presented.

It is respectfully submitted that there is here presented a proper and urgent occasion for the exercise of the supervisory powers of this Court. If a Court of Appeals, in reviewing a decision of a Federal District Court is erroneously of the opinion that the question is one upon which federal courts are free to exercise an independent judgment as to what the law is, and thereupon declines to abide by a finding made pursuant to the rules of law prevailing in the courts of the state in which the cause of action arose, because of the importance of the question as to whether the Court of Appeals is free to disregard the rule of law of Indiana, certiorari should be granted.

WHEREFORE, petitioners pray that this petition for a writ of certiorari be granted, and this Court s writ of certiorari issue to the United States Court of Appeals for

the Seventh Circuit for the purpose of reviewing the questions hereinbefore specified.

Respectfully submitted,

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